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PACIFIC TELESIS
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November 15, 1993

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Dear Mr. Caton:

Re: ET Docket No. 93-266 - Review of the Pioneer's Preference Rules

On behalf of Pacific Bell and Nevada Bell, please find enclosed an original and six copies of their "Comments" in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,

William F. Adler/SCW

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Review of the Pioneer's)
Preference Rules)

ET Docket No. 93-266

COMMENTS OF PACIFIC BELL AND NEVADA BELL

With the introduction of competitive bidding for licenses, the likelihood that a party will invest in experimentation in new technologies may be dramatically reduced in the future unless the pioneer preference rules are extended. The public policy benefits of encouraging innovation and research into new technology and its applications, however, are also important and should be continued.

Research and development of new services is the driver of future economic growth, technological innovation and the creation of job opportunities. The pioneer preference rules foster innovation in telecommunications and clearly serve the public interest. Rescinding the pioneer preference rules would be inequitable and constitute an unfair shift in policy after many parties have invested a tremendous amount of time and money.

Auction rules can and should be created that continue the awarding of pioneer preference licenses. If the rules are

extended, an innovative party should be able to have a reasonable expectation that it will be awarded a license.

The rules should therefore be extended but they should be modified to recognize the competitive bidding environment. To designate a party as a pioneer preference awardee but not grant that party a license would not be likely to encourage innovation and for that reason we disagree with that suggestion.¹

We believe that a pioneer preference awardee should be ensured of receiving a license by selecting from available spectrum blocks prior to the commencement of the auction. The assurance of acquiring spectrum in a geographic area selected by the winner will provide an incentive for firms to experiment with innovative telecommunications technologies and will recognize the expenses incurred by such experimentation. However, an outright grant of a license would confer a significant cost advantage in a highly competitive market over firms which will be required to expend financial resources to successfully bid in auctions to acquire spectrum. Firms bidding in auctions will have no assurance of acquiring licenses in areas they target. The pioneer preference rules should be extended to balance the incentive for innovation with the need to find an economically rational benchmark to value

¹ NPRM, para. 12.

the spectrum block chosen by the pioneer preference winner. The Commission's proposal that the pioneering party's license be paid for at a discount from the winning bid² is a step in the right direction but is vague and without a clear economic basis.

We reiterate here our position³ that a pioneer preference licensee should be required to pay a fee equal to the lowest winning bid for the appropriate licensing area. Such a scheme would recognize the licensee's pioneering efforts by ensuring a license with a charge equal to the lowest winning bid but would not allow a windfall.

This proposal is based on economics relevant to the competitive bidding process. Prices generated by the auctions will create the appropriate benchmark to be used to develop the price that the pioneering party should be required to pay. The value of the innovation would still be recognized under this proposal because the winning party would be assured of obtaining a license in the area desired and would not pay more than the other winning bid in that serving area.

² Id.

³ In the Matter of Amendment of the Commission's Rules to Establish New Narrowband Personal Communications Services, GEN Docket No. 90-314, ET Docket No. 92-100, Petition for Clarification of Pacific Bell, September 10, 1993, p.2.

Under our proposed rules, the pioneer preference awardee, if it was a designated entity, would be permitted to select either the 20 MHz BTA block or one of the 10 MHz BTA blocks prior to the commencement of the auction for that area. If the awardee chooses the 20 MHz BTA block, it would pay the sum of the lowest two winning bids for 10 MHz BTAs in that serving area. If the awardee selects the 10 MHz block, the awardee will pay the lowest winning bid among the 10 MHz blocks in that BTA if the BTA is awarded individually.

If, on the other hand, the targeted BTA is to be awarded on an aggregated basis (i.e., using combinatorial bidding), the awardee would pay the highest losing price among bids for individual blocks in that BTA. The pioneering party would take the block desired and the winning combinatorial bidder would receive the remaining blocks.

The award of an MTA license to a pioneer preference awardee would be inappropriate. Such an award would be too large of a grant under anticipated bidding levels. Should the Commission grant an MTA pioneer preference license, however, the winner should pay an amount equal to the highest losing bid for the MTA awarded by auction in that particular serving area.

A pioneer preference winner may also be a firm that does not qualify as a designated entity under the rules established to define such entities under the auction

NPRM.⁴ A large, multi-billion dollar corporation should not be awarded a 20 MHz BTA block which has been reserved for designated entities. Pioneer preference winners which are not designated entities should be permitted to select from among the 10 MHz BTA blocks prior to the commencement of the auction.

The Commission's proposed administrative amendments to the pioneer preference rules are reasonable and should be made.⁵ Additionally, the Commission's recommendation that pioneer preference awards should only be made to those parties that develop new technologies to provide new services or that significantly improve existing services is advisable and should be adopted.⁶

[Signature Page Follows]

⁴ In the Matter of Implementation of Section 309(j) of the Communications Act Competitive Bidding, PP Docket No. 93-253, (released October 12, 1993), para. 77.

⁵ NPRM, paras. 14-16.

⁶ Id., para. 17.

To promote confidence in the pioneer preference rules and to treat the current winners equitably, pioneer preference awards should be granted to the three PCS winners and the one 28 GHz winner. Payment for the licenses should be determined by auctions consistent with the rules outlined above.

Respectfully submitted,

PACIFIC BELL AND NEVADA BELL



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Date: November 15, 1993